

# Court of Appeals, State of Michigan

## ORDER

People of MI v Jason Allen Boismier

Docket No. 291642

LC No. 08-012562-01

Christopher M. Murray  
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens  
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting leave to appeal, the Court orders that the April 3, 2009, order granting defendant's motion for a new trial is VACATED. Defendant moved for a new trial on the basis that prosecutor's questions posed during cross-examination of defendant falsely suggested that he admitted to his neighbor that he had consensual sex with the complainant and constituted misconduct that denied him a fair trial. The prosecution responded that it had a good-faith basis for asking the questions, and that the questions did not deny defendant a fair trial. Rather than resolving these arguments, the trial court ruled that the prosecution's questions violated a direct order, apparently made during a side-bar conference off the record, and then summarily stated that the questions "tainted the entire trial."

The matter is REMANDED to the trial court to resolve whether the prosecution had a good-faith basis for asking the questions, and if not, to address whether defendant was prejudiced and denied a fair trial as a result of the prosecutor's questions. See *People v Taylor*, 110 Mich App 823; 314 NW2d 498 (1981). The trial court should consider that defense counsel addressed the matter during his closing argument, and the trial court shall also explain on the record the substance of the conversation between the court and the attorneys during their side-bar conference to which it referred in its April 3, 2009, ruling. The trial court is instructed to hear and decide this matter within 56 days of the Clerk's certification of this order, and shall cause a transcript of any hearing on remand to be prepared and filed within 21 days after completion of the proceeding. The prosecution must forward to this Court copies of any order of the remand proceeding within 7 days after entry, and all transcripts immediately after they are filed by the court reporter. The Court retains jurisdiction.

It is also noted that the parties filed affidavits with this Court that were apparently not filed in the trial court. Therefore, this Court cannot consider them. MCR 7.201(A)(1); *People v Eccles*, 260 Mich App 379, 384 n 4; 677 NW2d 76 (2004).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 31 2009

Date

*Sandra Schultz Mengel*  
Chief Clerk